

ELDEN A. LeROY
DOROTHY A. LeROY

IBLA 80-20

Decided August 20, 1980

Appeal from the California State Office, Bureau of Land Management, declaring lode mining claim Oris #4, as amended, Survey No. 6856, abandoned and void and rejecting application for mineral patent No. CA 5951.

Affirmed.

1. Administrative Authority: Generally--Constitutional Law: Generally

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to decide whether or not the recordation of mining claims provisions of the Mining in the Parks Act, 90 Stat. 1342, 16 U.S.C. § 1907 (1976), are constitutional.

2. Administrative Authority: Estoppel

Reliance upon erroneous advice or incomplete information provided by Departmental employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute for his failure to comply with its requirements.

3. Act of September 28, 1976--Federal Land Policy and Management Act 1976: Recordation of Mining Claims and Abandonment--National Park Service

Mining Claims located in units of the National Park System must be recorded within 1 year of the date of enactment of the Mining in the Parks Act, sec. 8 of the Act of Sept. 28, 1976, 16 U.S.C. § 1907 (1976), rather than within

3 years of the enactment of the Federal Land Policy and Management Act of 1976, Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Carol E. Hawes, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Eldon A. LeRoy and Dorothy A. LeRoy appeal from a decision of the California State Office, Bureau of Land Management (BLM), declaring lode mining claim, Oris #4, as amended, survey No. 6856, abandoned and void and rejecting application for mineral patent No. CA 5951.

Appellants located the Oris #4 lode mining claim on March 24, 1960, and notice thereof was recorded in Book 638 of Official Records, page 51, in the Office of the Recorder, Shasta County, California. The claim is situated in the Whiskeytown mining district and is described in the location notice as being in the E 1/2 NE 1/4 NE 1/4 sec. 34, T. 32 N., R. 6 W., Mount Diablo meridian.

The claim is situated in the Whiskeytown National Recreation Area created by Act of Congress dated November 8, 1965. By notice to "Claimants of Mining Claims" published in the Federal Register October 20, 1976, the National Park Service specified that in accordance with section 8 of the Mining in the Parks Act, Act of September 28, 1976, 16 U.S.C. § 1907 (1976), all claims located prior to or on the date of the Act must be recorded with the superintendent on or before September 28, 1977, and that any claims not so recorded shall be conclusively presumed to be abandoned and shall be void.

Section 314 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), and implementing regulations in 43 CFR 3833 require all unpatented mining claims to be recorded with BLM. The regulations provide that the superintendent of the various National Park System units will provide BLM with copies of notices that had been properly recorded with that agency under the Act of September 28, 1976, and all claims so recorded will be deemed in full compliance with the Act of October 21, 1976. 1/

1/ While the filing of the documents required by the Mining in the Parks Act, supra, would meet the requirements of FLPMA that an individual file a copy of the notice of location, it is still necessary for the owner of an unpatented mining claim within the boundaries of one of the units of the National Park System to file on or before October 22, 1979, and on or before each December 30 of each calendar year after the year of recording of such documents, either a notice of intention to hold, or evidence of assessment work. See 43 CFR 3833.2-1(b).

By letter of November 28, 1977, the acting superintendent of the Whiskeytown National Recreation Area informed appellant that the documents required by the Mining in the Parks Act had not been received. The letter stated that the documents "should have been filed on or before September 28, 1977" and any mining claim not so recorded shall be conclusively presumed to be abandoned and shall be void. Concluding the letter, however, was a statement that if the documents were received within 2 weeks of receipt of the letter it would be considered as compliance with the law. Thereafter, the claimant, apparently relying on this statement, did record the claim with the Superintendent on December 8, 1977.

The location notice of the Oris #4 mining claim was amended to correct the original location on December 13, 1977, and notice thereof recorded in Book 1481 of Official Records, page 201, of said county. Subsequently, an application for mineral survey was filed with BLM and survey No. 6856 was approved on November 8, 1978, embracing land in NE 1/4 sec. 34 and NW 1/4 sec. 35 of said township and range. The amended notice was not recorded with the superintendent, but was the subject of mineral patent application No. CA 5951 filed with BLM on February 23, 1979. By decision of April 4, 1979, the patent application was held for rejection, subject to the filing of additional documents.

BLM, by the decision of September 10, 1979, declared the Oris #4 lode mining claim, as amended, survey No. 6856, abandoned and void, vacated its decision of April 4, 1979, and rejected the mineral patent application. BLM stated its reasons as follows:

Sec. 8 of the Act of September 28, 1976 (90 Stat. 1342; 16 U.S.C. 1901) and the regulations in 36 CFR 9 require that any claimant of an unpatented mining claim in a unit shall, within 12 months after September 28, 1976, record the claim in the Office of the Superintendent of the unit. Actual receipt by the appropriate Superintendent on or before September 28, 1977, is required. The Act and regulations further provide that any unpatented claim not so recorded shall be conclusively presumed to be abandoned and shall be void. [Emphasis added.]

The United States cannot be bound by the unauthorized acts of its agents and the erroneous statement allowing additional time for recording will not permit the Department to ignore the plain provision of the statute. According to the documents submitted to this office by the National Park Service on May 18, 1979, the claim was not recorded timely and the Act and implementing regulations mandate the consequences of failure to file; therefore, the Oris #4 lode mining claim is hereby declared abandoned and void.

However, it follows that, since the amended location notice was not recorded as required above, the Oris #4 lode claim as amended, Survey No. 6856, is likewise declared abandoned and void; the decision of April 4, 1979, vacated and the application for mineral patent rejected.

Appellants argue their position based on constitutional grounds and estoppel. One of appellants' arguments is that BLM and Park Service failed to allege that the Department complied with the notice requirement of section 8 of the Mining in the Parks Act, 16 U.S.C. § 1907 (1976). Regardless of whether such publication was alleged, the Park Service, pursuant to section 8, did, in fact, publish the required notice on October 20, 1976. See 41 FR 46357 (Oct. 20, 1976). Appellants' argument on this point must be rejected.

[1] Appellants put forth several constitutional arguments in the statement of reasons. The Board has decided in a number of cases that the Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to decide whether or not the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional. Charlie Carnal, 43 IBLA 10 (1979); Al Sherman, 38 IBLA 300 (1978). The same must, perforce, hold true as to the recordation provisions of the Mining in the Parks Act.

[2] Two of appellants' contentions are based on their argument that the Government should be bound by the actions and representations of its agents as to the deadlines for recording their mining claim. On a number of previous occasions the Board has discussed this issue. The consistent holding of the Board has been that reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements. Clair R. Caldwell, 42 IBLA 139 (1979); Paul S. Coupey, 35 IBLA 112 (1978). In Fred S. Ghelarducci, 41 IBLA 277 (1979), the Board similarly held that reliance on incomplete information supplied by BLM employees cannot estop the United States or excuse compliance with a regulation. Also in Tom Brown, 37 IBLA 381 (1978), the Board held that reliance upon erroneous or incomplete information provided by Government employees cannot create any rights not authorized by law.

On a more fundamental basis, the essential element for the invocation of estoppel is detrimental reliance on the words or actions of another. The letter from the Acting Superintendent of the Whiskeytown National Recreation Area was dated November 28, 1977. Under the terms of the Mining in the Parks Act, supra, however, the claims were

required to be recorded by September 28, 1977. Thus, by the time the acting superintendent wrote to appellants, the time period had already elapsed. There is no way in which appellants' failure to meet the recordation requirements could have been occasioned by reliance on this letter.

[3] Finally, appellants argue that the provisions of the Mining in the Parks Act are inconsistent with the provisions of the Federal Land Policy and Management Act, supra, which permit 3 years for the recordation of mining claims located prior to the date of FLPMA's enactment. The provisions of FLPMA, however, are an irrelevancy herein. Appellants failed to comply with the express mandate of the Mining in the Parks Act, which Act was clearly applicable to their claim. The fact that one law requires that all mining claims, wherever located, must be recorded with BLM within 3 years, whereas another law requires that all mining claims, which are located within the boundaries of units of the National Park System, must be recorded within 1 year, creates no inconsistency. Obviously, appellants were required to comply with the specific requirement of the Mining in the Parks Act as regards the initial recordation of their mining claim. Their argument must be rejected.

Accordingly, BLM was correct in declaring lode mining claim, Oris #4, as amended, survey No. 6856, abandoned and void and rejecting application for mineral patent No. CA 5951.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

I concur in the result:

Joseph W. Goss
Administrative Judge

